

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7512 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

AHEJAJ HUSSAIN @ AJJU ABDUL JABBAR

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner
MR SR DIVETIYA ADD.GOVERNMENT PLEADER
for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 02/02/98

ORAL JUDGEMENT

By this application, under Article 226 of the Constitution of India, the petitioner who is the detenuue calls in question the legality and validity of the detention order passed by the Commissioner of Police, Ahmedabad City on 19th July, 1997 invoking Sec.3(2) of the Prevention of Anti-Social Activities Act (hereinafter be referred to as "the Act ").

2. The facts in brief leading the present petitioner to prefer this application may be stated. Against the petitioner about 7 complaints came to be lodged with different Police Stations in the State. A complaint for the offence under Sec. 392 read with Sec. 114 of the Indian Penal Code came to be lodged with the Ellisbridge Police Station, Ahmedabad and another complaint for the offence under Sec. 379 read with Sec.114 of the Indian Penal Code came to be lodged with Gomtipur Police Station, Ahmedabad. With regard to the offence of theft, three complaints came to be lodged with Makarpura Police Station, Gorva Police Station and J.P.Road Police Station in the city of Baroda. In the Khambhat City Police Station, a complaint for the offence under Sec. 379 and 120B of the Indian Penal Code, Sec.25(1)(b) of the Arms Act and Sec.8 of the Explosive Act also came to be lodged and the last complaint for the offence under Sec.400 & 120(A)(B) read with Sec.114 of the Indian Penal Code and Sec.25(1)(A) of the Arms Act came to be lodged in D.C.B. Police Station of the city of Ahmedabad. The Police Commissioner, when made inspection of different Police Stations, found that the petitioner was a head-strong person i.e. a tartar & decimator and by different criminal activities, he was terrorising the people. He was extorting money, causing injuries and/or causing damage to the properties. By diabolism, he used to cause the people to bend his way. His hellish and infernal activities disturbing public order were going berserk. No one was, therefore, ready to come forward and state against him. After great persuasion and when assurance was given that the facts about them disclosing their identity would be kept secret, some of the witnesses have under a great tension stated against the petitioner. After a deep inquiry, the Police Commissioner found that to curb the anti-social, subversive and chaotic activities of the petitioner and unspeakable diabolism terrorising the society, and upsetting the public order and leading to anarchy, ordinary law was falling short and was sounding dull. The only way out to hold him in kittle was to detain him under the Act. He, therefore, passed the impugned order. Consequent upon the same, the petitioner came to be arrested and at present, is in custody.

3. On behalf of the petitioner, challenging the impugned order, it is submitted that the order in question is passed after a great delay, as a result, the continuous detention has been rendered illegal. There was no justification for the authority passing the detention order withholding particulars, exercising the

privilege under Sec.9(2) of the Act. The detaining authority ought to have disclosed the particulars of the witnesses whose statements were recorded in support of the order passed. No doubt, under Section 9 of the Act, the authority has the privilege, but that is to be exercised judiciously, and not arbitrarily or capriciously so as to deprive the detainee of his right to have effective representation. As the particulars were not given, the petitioner was deprived of his right to have the effective representation against the order. The instances about the offences noted in the order were not sufficient to brand him a dangerous person or a scoundrel and to form a reasonable belief that maintenance of public order was thereby adversely affected. The statements recorded are vague and necessary particulars when wanting the order is bad in law and is liable to be quashed.

4. Mr.Divetiya, the learned APP has vehemently refuted the allegations made, submitting that there is no delay on the part of the authority passing the order of detention, promptly order was passed and in the public interest, the certain facts & particulars are withheld.

5. During the course of the hearing, as submitted, I would not like to dwell upon all the grounds raised for challenging the legality and validity of the order and will confine to the only point going to the root of the case. It is made crystal clear by the Appex Court in the case of Pradeep Nilkanth Paturkar Vs. S. Ramamurthi and others, reported in AIR 1994 SC 656 that if the detention order is passed after a long delay from the last offence registered or the statements of the witnesses recorded, the order of detention on the ground of delay, is required to be set aside. In the case before Supreme Court, about five months and eight days after the last registration of the offence and four months from the statement which came to be recorded, the detention order was passed, and so on the ground of delay, that detention order was quashed and the detainee was ordered to be set at liberty. In the case on hand, as per the statement before me, the last complaint came to be registered on 13th October, 1996 and thereafter impugned order came to be passed on 19th July, 1997. The order is, therefore, passed about nine months after the last complaint came to be recorded. When there is a delay of nine months, in view of the aforesaid decision of the Supreme Court in Pardeep Nilkanth Paturkar (supra), the impugned order cannot be maintained.

7. For the aforesaid reasons, this petition is

allowed. The order of detention passed on 19th July, 1997 by the Police Commissioner, Ahmedabad City, is hereby quashed and set aside and the petitioner-detenu is ordered to be set at liberty forth with, if not required in any other case. Rule accordingly made absolute.

(ccs) -----